

CODE ENFORCEMENT

Frequently Asked Questions

1. If someone violates the County Code or is operating in violation of the conditions stated in his or her use permit, and if he or she seeks a permit modification to allow the violative use to continue, can the County require the Applicant to revert to what is allowed pursuant to the current code/use permit until such time as the modification application is decided?

Answer:

Yes. The County can order the Applicant to discontinue the unlawful activity that is in violation of the code/use permit. In addition, Napa County Code Section 18.124.120(C) enables the County (at a Planning Commission hearing) to consider suspension or revocation of a use permit in its entirety if “the use for which the use permit was granted is being, or has been, exercised contrary to the terms or conditions of such approval.” The suspension penalty for the *existing* use permit could be implemented at the time the individual applies for a use permit modification, as well as the imposition of an administrative penalty. Note that due process is required for any suspension or revocation of the permit.

2. May the Planning Commission accept and consider evidence showing past or ongoing violations of the County Code or of use permit conditions as a basis to revoke or suspend a use permit?

Answer:

Yes. Napa County Code section 18.124.120 gives the Planning Commission the authority to suspend or revoke a use permit in certain circumstances, including instances where the operator is violating the use permit’s conditions. Thus, during the Commission’s hearing on possible revocation or suspension of the permit, the Commission would certainly hear and consider evidence relating to the violation of such conditions or violation of a provision of the County Code.

3. May the Planning Commission accept and consider evidence showing past or ongoing violations of use permit conditions in a hearing on an application for a use permit modification?

Answer:

Yes. For use permit modification applications that are heard by the Planning Commission (i.e., those that are more significant than minor modifications that may be considered by the Zoning Administrator upon notice but without a hearing or very minor modifications that may be approved administratively by the Planning Director without notice or hearing), Napa County Code section 18.124.040 allows the Planning Commission to admit and consider all “relevant evidence,” which the provision defines

as that “which reasonable persons are accustomed to rely upon in the conduct of serious affairs.” Evidence of past or ongoing violations (and the impact of such violations) is relevant and admissible. Such evidence may provide insight into the extent to which the subject property and surrounding properties are negatively or positively impacted by uses that go beyond those allowed by the present permit conditions. Such evidence may also be relevant to determining the propensity of the owner or operator to abide by permit conditions.

4. On appeal of a Planning Commission decision on a use permit modification application to the Board of Supervisors, may the Board consider evidence of past or present violations of use permit conditions where such evidence is either in the administrative record or outside the record?

Answer:

Yes. Napa County Code section 2.88.090 provides that the Board of Supervisors shall exercise its independent judgment in determining whether the decision appealed from was correct. For Planning Commission hearings on use permit modification applications, there should always be a transcript of the hearing and an administrative record. In those cases, section 2.88.090 states that the Board’s decision on the appeal shall be based on a review of the documentary record and transcript of the hearing “and such additional evidence as may be presented which could not have been presented at the time the decision appealed was made.” Section 2.88.090, subsection B, provides that upon a showing of good cause, the Chair may authorize a de novo review “and/or the presentation of additional evidence which could not have been presented at the time of the decision appealed from.” This determination by the Chair is subject to being overruled by a majority of the Board.

Thus, on appeal, if the Board Chair finds good cause for doing so and is not overruled by the Board, extrinsic evidence – outside the administrative record before the Commission – including evidence of past or present use permit violations, may be considered by the Board.

5. May the Planning Commission or the Board deny a use permit modification application based solely on past or ongoing use permit violations?

Answer:

No. The Planning Commission and the Board have discretion in determining whether to issue a use permit or to grant a use permit modification. However, such discretion is tempered by the requirement that the determination be based on standards and criteria that are designed to promote the general welfare of the County’s citizens. In particular, the evaluation of an application’s merits is to be based on an analysis of the proposed use itself. In most cases, any past violations of use permit conditions by the owner or operator would not have a bearing on the advisability of allowing the proposed use into the future.

Furthermore, independent remedies are available to the County to address use permit violations. Ongoing violations already result – or can result – in the County’s imposition of fines or even revocation or suspension of the existing use permit under the procedures established in Napa County Code section 18.124.120. That provision also states that if a use permit is revoked or if a use permit is denied, then “no application for a use permit for the same or substantially the same use and design or use of the same or substantially the same site shall be filed within one year from the date of denial or revocation.”

6. If someone receives a citation and is assessed an administrative fine by the County, what rights – if any – does that person have to challenge the fine? Where can information pertaining to those appeal rights be found?

Answer:

An Individual who receives an assessment of an administrative fine from the County has the right to appeal that fine pursuant to the procedures provided in Section 1.28.090 of the County Code. Specifically, the individual may request a hearing by completing a “request for hearing form” and returning the form to the Clerk of the Board of Supervisors within thirty days from the date of the citation, along with an advance deposit of the full amount of the penalty.

Next, unless the matter is urgent, a hearing will be scheduled between fifteen and sixty days from the date the “request for hearing” is filed. The hearing officer will provide notice of the time and place of the hearing.

At the hearing, the individual may testify and present evidence regarding the fine. The hearing officer will then issue a written decision upholding or canceling the County’s issuance of the fine. While the hearing officer’s decision is final, his or her decision may be appealed to the Napa County Superior Court in accordance with Government Code Section 53069.4.

7. How are people supposed to know if they are in violation of the County Code before being subject to an administrative fine or penalty?

Answer:

At the time (or shortly after) an individual receives a notice of violation, citation, or letter that includes an order to comply, the County will inform the individual of the fine that will be imposed if the individual fails to timely cure the violation. In addition, the County Code is available online and includes the County’s ordinances for which a violation would subject a person to the imposition of penalties.

8. What are the current fines for violations of the County Code and where can these fines be found?

Answer:

The current administrative fines for most violations are \$100 for the first offense, \$200 for the second offense, and \$500 for the third and all subsequent offenses. This information can be found in the County's Schedule of Fines, Resolution Number 00-120, which is a public record and can be obtained from the Office of the Board of Supervisors. All other administrative fines can be found in the chapter related to the violation for which the individual or entity was cited. In certain areas of regulation, such as the County's role as the Local Primacy Agency charged with enforcing the Safe Drinking Water Act (SDWA), California statutes may govern the amount of administrative penalties that may be imposed (e.g., \$1,000 per day under the SDWA).

9. If I am assessed a fine after I receive a citation or notice of violation from the County, and I pay my fine, do I still have to correct the violation, even though the fine is paid?

Answer:

Yes. A violating party is required to cure the violation even if the fine is paid. A payment of a fine will not absolve an individual of a subsequent fine if the violation is not cured. For example, if the County imposes a \$100 fine against an individual for a violation of the County Code, and the person pays the fine but does not correct the condition giving rise to the violation within a reasonable period of time, ultimately the County will likely impose a second fine in the amount of \$200. Regardless of whether that \$200 fine is paid, if the violation is not cured within a reasonable period of time, then the County will likely impose a \$500 fine.

10. Does the County condition its land use approvals (for example, modification of a use permit to increase wine production or visitation limits) on the applicant's payment of fines for past or present code or permit violations?

Answer:

No. The County is afforded discretion in its ability to assess whether to approve a conditional use permit (CUP) or modification of a CUP. However, the adopted standards and criteria for determining whether to grant such an application must be designed to promote the general welfare of the people of the county. In particular, the evaluation is conducted as to the *proposed* use. Since fines or penalties are imposed (and independently enforceable) due to a violation that has already occurred, conditioning the issuance of a new entitlement on payment of already-binding penalties or fines does not constitute a condition that would have a reasonable relationship to determining the merits of the application or to mitigating the impacts of the entitlement being sought. Thus, the County does not condition land use approvals on the payment of fines for past or present code or

permit violations relating solely to the *existing* use permit or to other aspects of the County code. The County may at any time impose an administrative penalty for past or present code violations, pursuant to the County Code, even at the time in which an application for a use permit modification is submitted. However, the ultimate inquiry of whether the approval of a CUP promotes the general welfare is a separate and distinct issue independent of the penalty that is imposed for a failure to comply in the past.